



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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In Reply Refer To:
02ETTX00-2018-
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0371
SWG-2015-00114

November 13, 2018

Denise Sloan
Regulatory Branch, CESWG-PE-RE
U. S. Army Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229

Dear Ms. Sloan:

The U.S. Fish and Wildlife Service (Service) has reviewed a Public Notice, dated October 18, 2018, for Department of the Army, U.S. Army Corps of Engineers (USACE), and Texas Commission on Environmental Quality (TCEQ), Permit Application SWG-2015-00114. The applicant, Rio Grande LNG, LLC (RG LNG) and Rio Bravo Pipeline, LLC (RBP), has requested authorization to construct, install, operate, and maintain structures and equipment for liquefaction and export of natural gas. The project site is located in a 135-mile-long pipeline corridor in Jim Wells, Kleberg, Kenedy, Willacy, and Cameron counties, Texas, and a 750.4-acre terminal site on property owned by the Brownsville Navigation District, adjacent to and in the Brownsville Ship Channel in Cameron County, Texas.

This report was prepared under the authority of and in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). It represents the coordinated views of the Department of the Interior. The recommendations in this report have been coordinated with representatives of the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (TGLO), the Texas Commission on Environmental Quality (TCEQ), the National Marine Fisheries Service (NMFS), and the Environmental Protection Agency (EPA).

The permit application indicates you have determined that the proposed action would affect federally listed species or critical habitat. The Service agrees with this assessment and will continue consultation with the lead federal agency, the Federal Energy Regulatory Commission (FERC). When consultation has been completed with FERC, and where conservation measures to avoid and minimize impacts to federally listed species or critical habitat have been agreed upon, and such measures are within wetlands and waters of the United States that are regulated by the USACE, the Service anticipates that those measures will be incorporated into an authorized USACE permit.

The Service's review of the stated impacts of the project finds that this information, as described in the permit application, is incomplete. The terminology used to describe the habitats within the footprint of the two primary components of the project, the RG LNG facility and the RBP is inconsistent. The permit application needs a summary of the total acres of land within the each of the project's components and the

types and acreages of habitats. Some of the descriptions and quantification of habitat types, as presented in the impact summary paragraph on page 2 of the application, are insufficiently defined, and other important habitats that are anticipated to be impacted seem to be missing from this section. For example, reference is made to “open land” without clarifying what this term means, particularly with regards to the presence of coastal prairie, an important resource associated with the federally listed Northern aplomados falcon. The Service assumes the term open land refers to uplands, but the applicant has not provided information regarding the habitats in this category, and the reference to shrub/forest land, may also be a reference to an upland category, but definition is needed. Several wetland habitat types are referenced in differing combinations rather than distinct accountings for each in the proposed impacts. The notations for various palustrine and marsh habitats impacts, for example, are sometimes combined, sometimes noted separately.

The Service recommends that prior to proceeding with additional review of this permit application, the USACE requires the applicant to provide, in a table, a clear accounting of the habitats for the RG LNG facility site, and a clear accounting of the habitats for the RBP including the pipeline’s work corridor and access routes. Tabulations for each of these two project components should include: total acres, of each habitat type present; acres of permanent impact to each of the habitat types; acres of temporary impact to each of the habitat types; and acres of each of the habitat types that are proposed to be avoided. The naming convention used for the identified habitat types should be noted and names standardized within the summary. Where a different name needs to be used for a habitat type that does not follow the selected naming convention, a definition for that habitat name should be provided. Additionally, the permit application lacks a figure for the RG LNG facility, and figures, for the RBP that depict the habitats present, particularly the wetland habitats. The Service recommends that these figures be provided for review, and that the habitat descriptions in the legends of those figures match the summary table.

The Service is aware that for the RBP, some wetlands within the footprint may not be jurisdictional; however, because some of these wetland types may be associated with federally listed species, the Service requests site-specific information regarding the location of all wetlands. The permit application notes that there will be no permanent loss of waters of the U.S. associated with the construction and maintenance of the gas supply pipeline; however, this will not be sufficient to address temporary impacts, and how those impacts would be mitigated, nor where federally listed species, or potential habitat, might be located relative to the wetlands, and become impacted in the applicant’s efforts to avoid wetland impacts. Therefore, in identifying, quantifying, and depicting wetland habitats on a map, the Service requests that the applicant provide information on all wetland habitats, jurisdictional and non-jurisdictional.

The permit application is missing information essential to providing project-specific review and comment for mitigation proposed for the impacts of the project. The application does not include a detailed plan that accounts for the mitigation of unavoidable impacts to jurisdictional waters and wetlands, nor for restoration and monitoring of any temporary impacts if the application is authorized by the USACE. The application is also missing the alternatives analysis essential to supporting the applicant’s preferred mitigation plan and an analysis of the sequential assessment of potential mitigative alternatives to avoid, minimize, rectify, reduce, and then compensate for impacts of the project. As noted in the application, the applicant proposes to mitigate for impacts to waters of the U.S. by preserving wetlands at the Loma Ecological Preserve. The alternatives analysis should also document how the proposed mitigation plan supports the national goal of no net loss of wetland acreage and function. The mitigation plan needs to include how the preferred mitigation alternative will be protected in perpetuity or the specifics steps that

will be followed to restore in the project area all of the impacted resources to pre-project functions and values after the life of the project has been completed.

The Service therefore recommends that:

1. Permit Application SWG-2015-00114 not be authorized as proposed,
2. The applicant provide a complete table of proposed project habitat impacts,
3. The applicant provide figures of the RG LNG Facility and the complete RBP Project areas illustrating habitats present, habitats proposed to be impacted, and habitats proposed to be temporarily impacted,
4. The applicant submit an alternatives analysis that addresses the sequential assessment of potential mitigative alternatives, how preferred mitigation supports the national goal of no net loss of wetlands, and an instrument for protection of mitigation areas in perpetuity,
5. The USACE not proceed with evaluation of a permit for this project until the above information has been provided for review and comment, and
6. Should USACE determine that issuance of a permit for the proposed project is in the public interest, that it delay authorization of a permit for this project until consultation between FERC and the Service has been completed and the findings of that consultation, as appropriate, are incorporated into the issued permit.

Thank you for the opportunity to review the proposed project. If you have questions or concerns regarding our comments and recommendations, please contact Pat Clements at pat_clements@fws.gov, or by phone at 361-225-7316.

Sincerely,



 Charles Ardizzone
Field Supervisor

cc:

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